

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 - NEW ENGLAND
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Boston, MA 02114-2023

OFFICE OF
ENVIRONMENTAL STEWARDSHIP

MEMORANDUM

Date: May 4, 2000

From: The United States Environmental Protection Agency - New England Region

To: Interested Parties

Re: EPA-NE's Minimum Criteria for Involvement of Superfund Companies at the Beede Waste Oil Superfund Site (Plaistow, New Hampshire)

This memorandum sets forth the current position of the United States Environmental Protection Agency, New England Region ("EPA-NE"), on the involvement of "Superfund Companies" in the settlement process at the Beede Waste Oil Superfund Site ("Beede" or the "Site"). Generally, a "Superfund Company" is a private entity that seeks to assume or incur the legal obligations to finance and/or perform the clean up at a Superfund site. One such Superfund Company, TRC, Inc., has approached EPA-NE expressing an interest in being involved in settlement of the liabilities of potentially responsible parties ("PRPs") associated with Beede.

EPA-NE neither promotes nor opposes the involvement of Superfund Companies at Beede. EPA-NE is, however, supportive of innovative settlement ideas relating to Superfund sites. EPA-NE will not oppose the use of a Superfund Company approach to settlement at Beede *provided* that the criteria described in this memorandum — and other criteria that EPA-NE may later set — are met and that EPA-NE finds the approach to be reasonable and in the public interest.

For any settlement proposal at Beede that involves a Superfund Company, the following overall principles apply. First, EPA-NE is neutral with respect to the involvement of any particular Superfund Company that may approach EPA-NE or the PRPs with a settlement proposal. To date, TRC is the only Superfund Company that has approached EPA-NE regarding Beede. However, there may be other Superfund Companies interested in the Site. EPA-NE does not favor, support, endorse or guarantee the involvement of any particular Superfund Company, and the selection of a particular Superfund Company will depend upon the input of many parties connected with Beede. Second, it is EPA-NE's goal that the PRPs be treated fairly in settlements at the Site. Third, the settlement and remedial process should not be delayed or significantly changed by a Superfund Company's involvement.

In addition to the above, EPA-NE considers the following minimum criteria to be prerequisites to the inclusion of a Superfund Company in the federal government's settlement and remedial process at Beede:

- ▶ One or more identified PRPs must express support to EPA-NE for the involvement of a Superfund Company and identify a PRP contact person or persons for this purpose;

- ▶ The Superfund Company must become a liable party and sign a consent decree which shall establish enforceable obligations under CERCLA to perform the work and/or pay costs;
- ▶ EPA-NE will engage in public outreach about Beede and will disclose its knowledge of the interest expressed by any Superfund Company that contacts EPA-NE. EPA-NE also will require the Superfund Company to identify a contact to answer questions and provide information;
- ▶ As a matter of enforcement discretion, EPA-NE will establish the PRP volumetric ranking list and identify parties eligible for de micromis, de minimis, or major party status under CERCLA;
- ▶ The Superfund Company must act consistently with EPA's superfund settlement policies (e.g., the de minimis, de micromis, and orphan share policies), as recommended by EPA-NE;
- ▶ The Superfund Company's settlement with the PRPs and the government must be achieved in a way that does not delay or interfere with EPA-NE's remedial schedule; and,
- ▶ The Superfund Company must demonstrate adequate financial assurance for the work and, to the extent that it will perform work, the Superfund Company must demonstrate the technical capability and expertise to do so. If a Superfund Company performs work at Beede, EPA-NE would be willing to look first to the Superfund Company for performance, but in the event it fails to perform, EPA-NE will reserve the right to require the major (non-de minimis) parties to complete the work.

To ensure adherence to the principles stated in this memorandum or to meet the government's enforcement and remedial goals at the Site, at any time, EPA-NE may change the requirements, or impose others, governing the involvement of a Superfund Company at Beede. Questions about this memorandum or developments at the Beede Waste Oil Superfund Site should be directed to the Beede Enforcement Hotline at 1-888-294-6980. Hotline staff will further direct inquiries to members of the EPA-NE Beede Case Team, as appropriate.

cc: U.S. EPA Headquarters, Office of Enforcement and Compliance Assurance
U.S. Department of Justice, Environmental Enforcement Section